

May 12, 2006

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Via Federal Express and Facsimile

Mr. Douglas Tomchuk
Remedial Project Manager
U.S. Environmental Protection Agency
290 Broadway, 19th Floor
New York, NY 10007-1866

RE: Response to USEPA's Notice With Respect To Berry's Creek Study Area, Bergen County, New Jersey

Dear Mr. Tomchuk:

This firm serves as Common Counsel to the SCP Cooperating PRP Group that is organized and working with the United States to remediate conditions at the Scientific Chemical Processing Superfund Site in Carlstadt, New Jersey ("SCP Site"). Members of the SCP Cooperating PRP Group are among the entities that have received a request from the United States to make a good faith proposal to enter into negotiations to perform a study of the Berry's Creek Study Area (the "Site" or "Study Area"). This letter is written on behalf of the companies on the attached list (the "Companies") in response to that request. The Companies intend this letter to constitute a good faith proposal demonstrating the Companies' willingness and qualifications to negotiate with USEPA and other PRPs to conduct and/or finance a study at the Site.

As you are aware, the Companies, as members of the SCP Site Cooperating PRP Group, have been performing remedial activities at the SCP Site to the satisfaction of USEPA. Such activities have included a remedial investigation/feasibility study, interim remedial measures and implementation of the most recent Record of Decision for the SCP Site. The historic involvement of the Companies that have undertaken these activities plainly demonstrates the commitment of the Companies to addressing environmental concerns associated with the SCP Site. The United States takes the position that impacts to the Study Area derive from numerous and multiple sources, including the SCP Site. Although the Companies dispute the contention that the SCP Site plays a role in the degradation of Berry's Creek and believe that the United States is inappropriately targeting the SCP Cooperating PRP Group, the Companies nonetheless are prepared in good faith to enter into negotiations with USEPA and other PRPs to conduct and/or finance a study at the Site.

The willingness of the Companies to conduct a study at the Site is based on, but not necessarily limited to, the following conditions:

- i) negotiation of a Consent Decree/Administrative Order on Consent and Statement of Work with terms acceptable to each participating Company individually as well as to USEPA;



Mr. Douglas Tomchuk
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- ii) agreement to execute a negotiated Consent Decree/Administrative Order on Consent by a sufficient number of entities (including non-SCP-related PRPs);
- iii) receipt by the Companies of an appropriate credit (or carve out) through the use of mixed funding or other negotiated mechanism for investigation of contamination that is unrelated to, and/or divisible from, the SCP Site;
- iv) receipt by the Companies of an appropriate credit (or carve out) through the use of mixed funding or other negotiated mechanism should potentially responsible parties with nexus to sites in the Berry's Creek Study Area that may have contributed to the environmental condition of the Study Area refuse to or be financially unable to participate in the study;
- v) agreement on a methodology to identify other potentially responsible parties;
- vi) agreement on a methodology to discourage potentially responsible parties that have been identified or may be identified in the future from refusing to participate in the proposed study; and
- vii) completion of negotiations among recipients of USEPA's notice letter for a mechanism to perform the work under a Consent Decree/Administrative Order on Consent

The Companies have previously demonstrated the requisite technical capability to carry out the proposed work at the Site as reflected in the successful design and implementation of work at the SCP Site. In connection with any agreement ultimately reached to perform work at the Site, the Companies would join with other notice letter recipients to select a contractor or contractors qualified to perform the work. The Companies, either directly or indirectly through their representatives, have already participated in at least one meeting among themselves, one meeting with non-SCP-related PRPs and a number of conference calls with non-SCP-related PRPs in order to develop a mechanism to undertake a study of the Site.

The Companies, together with other notice letter recipients, collectively are of sufficient financial worth to finance the work required for a study of the Site. Many of the Companies as well as many of the other notice letter recipients are Fortune 500 companies. Moreover, most of the other notice letter recipients as well as the Companies have demonstrated the requisite capability to finance the work through their remedial activities at numerous other sites.

The Companies recognize that certain oversight and response costs may be recoverable by USEPA under CERCLA. Subject to and without waiving any defenses

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or other rights they may have as to the recoverability of certain costs, or their entitlement to a reduction, if not elimination, of past costs and/or oversight costs by application of USEPA's Orphan Share Policy or other means, the Companies, together with the other noticed parties responding to USEPA's notice letter, will negotiate with USEPA regarding such costs.

Individual Companies may be represented by specific individuals in the course of these negotiations. The undersigned, however, for convenience, will coordinate communications among USEPA and the Companies during these negotiations.

By providing this good faith proposal, each Company is not, and shall not be construed as, admitting in any way that it is liable or responsible for costs or damages of any sort incurred by USEPA or others relating to the Site. This Good Faith Offer is thus made without prejudice and without admission of any fact, liability, fault or responsibility for the environmental conditions associated with the Study Area or the SCP Site itself. Each Company individually, and the Companies collectively, expressly reserve all rights and defenses at law or equity that may apply.

If you have questions regarding this proposal or would like to discuss it at any time, please contact me at your convenience.

Yours very truly



William L. Warren

WLW:np

cc: Clay Monroe, Esquire
Assistant Regional Counsel
Office of Regional Counsel
New Jersey Superfund Branch
U.S. Environmental Protection Agency
290 Broadway, 17th Floor
New York, NY 10007-1866

Parties on Attachment A

Enclosure: Attachment A – List of Companies

ATTACHMENT A
(Page 1 of 2)

3M Company
Air Products and Chemicals, Inc.
Akzo Nobel Coatings Inc. as successor-in-interest to Reliance Universal, Inc.
American Cyanamid Company, n/k/a Wyeth Holdings Corporation
American Standard, Inc.
BASF Corporation
Bayer
Ber Mar Manufacturing Corp.
Borden (Hexion)
Bristol-Myers Squibb
Browning-Ferris Industries of New Jersey, Inc.
CBS Corporation (f/k/a Viacom Inc. f/k/a Westinghouse Electric Corporation)
Chemcoat Inc.
Ciba Specialty Chemicals Corporation on behalf of Ciba Geigy
CNA Holdings, Inc.
Congoleum Corporation
Continental Holdings Inc. for Continental Can Company, Inc.
Cycle Chem, Inc.
Dri Print Foils
DuPont Company
Exxon Mobil Corporation
General Electric Company on behalf of itself and as successor to RCA Corporation
General Motors Corporation
Hoffmann-La Roche Inc
John L. Armitage & Company
Johnson & Johnson on behalf of itself and its former subsidiary Permacel Inc.
Kirker Enterprises, Inc.
L.E. Carpenter & Company by PolyOne Corporation as its successor in interest
Legacy Site Services LLC as agent for Arkema Inc., formerly known as ATOFINA Chemicals, Inc. and Elf Atochem North America, Inc., successor to Pennwalt Corporation and M&T Chemicals, Inc.
Lucent Technologies Inc., a.k.a Western Electric Co., AT&T Corp., and/or AT&T Technologies
Mack Trucks, Inc.
Mallinckrodt Baker, Inc. (formerly known as J.T. Baker Chemical Company)
Manor Care Health Services, Inc.
Manor Care of America, Inc.
Marisol, Inc.
Merck
Monroe Chemical, Inc.
Nepera, Inc. a/k/a Nepera Chemical Co., Inc.

ATTACHMENT A
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Northrop Grumman Systems Corporation
Occidental Chemical Corporation as successor to Diamond Shamrock
Paxar Corporation
Pfizer Inc
Pharmacia Corporation
Portfolio One, Inc.
Revlon Consumer Products Corporation
Seagrave Coatings Corp. (NJ) formerly known as Chemray Coatings Corp.
SI Group (formerly Schenectady International)
Siegfried (USA)
Simon Wrecking Co., Inc.
SmithKline Beecham Corporation
The Dow Chemical Company on behalf of itself and Dowell Industrial Services
Union Carbide Corporation
United Technologies Corporation on behalf of Inmont Corporation
Warner Lambert

Exhibit A
List of Companies to Good Faith Offer Letter Dated May 12, 2006
Regarding Berry's Creek Study Area

Ashland Inc.

Benjamin Moore & Co.

Chemcoat, Inc.

Hexion Specialty Chemicals, Inc. (formerly Borden)

Technical Coatings Co.

Robin Lampkin-Isabel
Senior Group Counsel

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May 12, 2006

Via Federal Express

Mr. Douglas Tomchuk
Remedial Project Manager
U.S. Environmental Protection Agency
290 Broadway, 19th Floor
New York, NY 10007-1866

RE: Response to USEPA's Notice With Respect To Berry's Creek Study Area, Bergen County, New Jersey – SCP-only Site

Dear Mr. Tomchuk:

This letter is in response to the notice letter that the companies listed on Exhibit A to this letter received from U.S. EPA with respect to the Berry's Creek Study Area in which the agency requested over one hundred and fifty companies to enter into negotiations to perform a study of the Site. The letter should be considered as supplementary to the letter the agency will receive from William Warren, who is coordinating communications between U. S. EPA and the members of the SCP Cooperating PRP Group, of which the companies on the attached Exhibit A are members.

The companies listed on Exhibit A (hereinafter "Companies") are convinced that important differences in nexus and, thus, as possible contributors to the pollution of Berry's Creek, exist among the scores of companies that have received this notice letter that should be emphasized and taken into consideration by U.S. EPA. First, a dozen or more companies appear to own facilities that are located directly on Berry's Creek. Second, nearly 80 companies apparently received the U.S. EPA letter solely because of their nexus to the Ventron/Velsicol site, a facility that also lies on Berry's Creek. Third, 49 out of 69 members of the SCP Cooperating PRP Group, including the Companies, have apparently received the notice letter solely because they have been performing remedial activities at the SCP site, a facility that abuts Peach Island Creek, a tributary to Berry's Creek. While the Companies intend this letter to constitute a good faith proposal demonstrating their willingness and qualifications to negotiate with U.S. EPA to conduct and/or finance a study at the Site, they dispute the agency's contention that the SCP Site is contributing to the degradation of Berry's Creek and believe that the agency is inappropriately targeting many companies in the SCP Site Cooperating PRP Group whose only alleged nexus to Berry's Creek is as customers of Scientific Chemical Processing.

If the Companies listed on Exhibit A are involved in Berry's Creek, their involvement is clearly de minimis in nature. The companies listed on Exhibit A will take appropriate action to promote the formation of a de minimis committee so that they, and any similarly situated PRPs, can discuss an appropriate de minimis settlement with the agency.

The willingness of the Companies to participate in the conduct of a study at the Site is conditioned on, but not necessarily limited to, the following:

- i) negotiation of a Consent Decree/Administrative Order on Consent and Statement of Work with terms acceptable to each of the Companies as well as to U.S. EPA;
- ii) agreement to execute a negotiated Consent Decree/Administrative Order on Consent by a sufficient number of entities;
- iii) receipt by the Companies of an appropriate credit (or carve out) through the use of mixed funding or other negotiated mechanism for investigation of contamination that is unrelated to, and/or divisible from, the SCP Site;
- iv) receipt by the Companies of an appropriate credit (or carve out) through the use of mixed funding or other negotiated mechanism should potentially responsible parties with nexus to sites in the Berry's Creek Study Area that may have contributed to the environmental condition of the Study Area refuse to or be financially unable to participate in the study;
- v) agreement on a methodology to identify other potentially responsible parties;
- vi) agreement on a methodology to discourage potentially responsible parties that have been identified or may be identified in the future from refusing to participate in the proposed study; and
- vii) completion of negotiations among recipients of U.S. EPA's notice letter for a mechanism to perform the work under a Consent Decree/Administrative Order on Consent.

The Companies, as members of the SCP Site Cooperating PRP Group, have previously demonstrated the requisite technical capability to carry out the proposed work at the Site as reflected in the successful design and implementation of work at the SCP Site. In connection with any agreement ultimately reached to perform work at the Site, the Companies would join with other notice letter recipients to select a contractor or contractors qualified to perform the work. The Companies have already engaged in a number of conference calls and meetings in order to explore development of a mechanism to undertake a study of the Site.

The Companies, together with other notice letter recipients, collectively have sufficient financial worth to finance the work required for a study of the Site. Moreover, the Companies and many of the other notice letter recipients have demonstrated the requisite capability to finance the work at numerous other sites.

The Companies recognize that certain oversight and response costs may be recoverable by U.S. EPA under CERCLA. Subject to and without waiving any defenses or other rights they may have as to the recoverability of certain costs, or their entitlement to a reduction, if not elimination, of past costs and/or oversight costs by application of U.S. EPA's Orphan Share Policy or other means, the Companies, together with the other noticed parties responding to U.S. EPA's notice letter, will negotiate with U.S. EPA regarding such costs.

By providing this good faith proposal, each of the Companies is not, and shall not be construed as, admitting in any way that it is liable or responsible for costs or damages of any sort incurred by U.S. EPA or others relating to the Site. This Good Faith Offer is thus made without prejudice and without admission of any fact, liability, fault or responsibility for the environmental conditions associated with the Study Area or the SCP Site itself. Each Company individually, and the Companies collectively, expressly reserve all rights and defenses at law or equity that may apply.

While the individual Companies listed on Exhibit A may be represented by specific individuals in the course of these negotiations, to facilitate communications on this matter, the agency should coordinate with these Companies, like the others in the SCP Cooperating PRP Group, through William Warren.

If you have questions regarding this proposal or would like to discuss it at any time, please contact me at your convenience.

Sincerely,


Robin Lampkin-Isabel

cc: Clay Monroe, Esquire
Assistant Regional Counsel
Office of Regional Counsel
New Jersey Superfund Branch
U.S. Environmental Protection Agency
290 Broadway, 17th Floor
New York, NY 10007-1866

William L. Warren, Esquire
Drinker Biddle & Reath
105 College Road East, Suite 300
Princeton, NJ 08542

Parties on Exhibit A

Enclosure: Exhibit A – List of Companies